

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Arbitration Case No. 37 of 2020

Date of decision: 11th January, 2023

Jai Singh and Company

Petitioner

Versus

The Public Works Department (B&R) and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Keshav Gupta, Advocate for the petitioner.
Mr. Sharad Aggarwal, Assistant Advocate General, Haryana.

AVNEESH JHINGAN, J (Oral):

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') for appointment of an arbitrator for adjudication of disputes between the parties.

The petitioner was allotted tender for toll plaza. Clause 38 of the agreement provides for settlement of dispute by Engineer-in-charge or an official to whom the powers are delegated or any other official in-charge for fee collection. Clause 39 provides for appointment of arbitrator in case the entrepreneur disagrees with the decision taken by the Engineer-in-Chief.

Learned counsel for the petitioner approached the respondents for pre-arbitration settlement with a request annexed with the petition as

Annexure A3 and thereafter as no action was taken, notice dated 23.10.2019 was issued for appointment of the arbitrator. Since needful was not done, hence the present petition.

Learned counsel for the State submits that Annexure A3 is not in consonance with Clause 38 of the agreement. He further submits that toll plaza has been shut down and no money is payable to the petitioner.

The contention of learned counsel for the State that Clause 38 of the agreement has not been complied with lacks merit. Receipt of Annexure A3 has not been denied. From the reading of Clause 38, it is evident that pre-arbitration settlement is to be done by the Engineer-in-charge or any officer appointed by the employer or any official incharge of fee collection. The contention that Annexure A3 was not addressed to the official concerned does not enhance the case of the respondents. Once request for pre-arbitral settlement was received by the respondents, it was for them to ensure that it reaches the concerned quarter, moreso in view of the language of clause 38 which does not clearly indicate one official who had to do pre-arbitration settlement.

It would not be out of place to mention that mechanism of arbitration is provided for speedy settlement of the disputes. The conduct of the respondents neither responding to Annexure A3 nor appointing the arbitrator is contrary to the spirit of alternative mechanism provided for dispute resolution.

The petition is accordingly disposed of by appointing Mr. Justice Jaspal Singh, former Judge of this court, # 506, Lane No. 9N/1 the Foothills Cooperative Society, Mullanpur, SAS Nagar as the sole

arbitrator subject to declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to settle the dispute between the parties.

The arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended. The fee of the arbitrator will be equally borne by both the parties.

The arbitrator is requested to complete the proceedings as per time limit specified under Section 29A of the Act.

It is clarified that the reference shall be subject to the petitioner's complying with all the requirements of the agreement including the condition of pre-deposit.

Copy of the order be sent to the appointed arbitrator.

[AVNEESH JHINGAN]
JUDGE

11th January, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |